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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,494	12/19/2001	Norbert Dreer	SB-488	9282

7590

09/02/2003

LERNER AND GREENBERG, P.A.  
Post Office Box 2480  
Hollywood, FL 33022-2480

EXAMINER

CRANE, DANIEL C

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 09/02/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/026,494

Applicant(s)

DREER ET AL.

Examiner

Daniel C Crane

Art Unit

3725

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-8.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See attachment

Daniel C Crane  
Primary Examiner  
Art Unit: 3725

Art Unit: 3725

## **ATTACHMENT TO ADVISORY ACTION**

Applicants have submitted an Amendment to the Final Office Action on August 15, 2003. The Amendment has been entered.

The following comments are added to further elaborate on the Examiner's position relative to the applicability of the Grierson teaching against the claims. First, applicants have narrowed the claims by using a "consisting essentially" of clause. Using such a phrase places the burden on applicants to show that any materials not listed in the claim and allegedly taught by the prior art materially effect the overall composition of the claimed material. Applicants have not done this. Furthermore, it is noted that applicants have recited that the remainder of the material in the composition is a binder material. And by disclosure, this remainder material is a provided from list of materials such as nickel and iron or Mo, Co, Cu, Al, Si, Hf, Ru, Rd and Re (see page 6 of the specification). Second, the fact that the claimed tool involves a tool body formed "to receive copper or a copper alloy in the solid state" (claim 1), does not preclude a tool of that shown by Grierson where the tool is used with material in the molten state. This is the case because the tool will "receive" the material as it transitions into the solid state. Accordingly, the rejection of the claims over the Grierson teaching is tenable.

## **INQUIRIES**

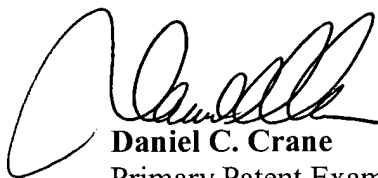
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is (703) 308-1870. The examiner's office hours are 6:30 AM – 5:00 PM, Tuesday through Friday. The examiner's supervisor, Mr. Allen Ostrager, can be reached at (703) 308-3136.

Art Unit: 3725

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 308-1148**.

Documents related to the instant application may be submitted directly to Group 3700 by facsimile transmission at all times. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Group 3725 Facsimile Center number is **(703) 305-3579**.

DCCrane  
August 28, 2003

A handwritten signature in black ink, appearing to read 'DCCrane', is positioned above the printed name and title.

**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725